



**IT IS ORDERED as set forth below:**

**Date: July 14, 2009**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A08-69486-PWB
	:	
LARRY B. LEE	:	
and SHIRLEY A. LEE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
HOME LOAN SERVICES, INC.,	:	
	:	
Movant	:	CONTESTED MATTER
	:	
v.	:	
	:	
LARRY B. LEE	:	
SHIRLEY A. LEE	:	
MARY IDA TOWNSON, Trustee,	:	
	:	
Respondents.	:	

**ORDER DENYING MOTION FOR CONVERSION TO A CHAPTER 7 PROCEEDING  
PURSUANT TO CONSENT ORDER ENTERED ON NOVEMBER 13, 2008**

Before the Court is the default motion (Doc. 31) and proposed order of Home Loan

Services, Inc. for conversion of this case to chapter 7 pursuant to a November 13, 2008 Consent Order on its motion for relief from the automatic stay. The Consent Order provides that if the Debtors fail to comply with the terms of the Consent Order, including repayment of the post-petition arrearage, the Movant may obtain an order terminating the automatic stay subject to the following conditions (Order at 3):

Upon failure by Debtors to [comply with the terms of the Consent Order] and upon notice of default sent by first class mail to Debtors and Debtors' attorney and failure by Debtors to cure such default within ten (10) days of the date of receipt of such notice, Movant may file a motion and affidavit of default with the Court, with service upon Debtors and Debtors' attorney, and the Chapter 13 Trustee. Notwithstanding, Debtors' failure to cure, Movant agrees to provide the Trustee with twenty (20) days notice of Debtors' failure to cure the default. During said twenty (20) day period the Trustee may file a motion to convert the case to a Chapter 7 proceeding or file a motion to sell the subject property. If no motion to convert the case, motion to sell, or response alleging some extraordinary circumstances comparable to those contemplated by Fed. R. Civ. P. 60(b), is filed within twenty (20) days from the date of service of the motion and affidavit of default [sic] on the Chapter 13 Trustee, then the Court may enter the order terminating the automatic stay, without further notice or hearing.

The Movant asserts that the Debtors have "breached the terms of said Consent Order, and therefore Movant is entitled to conversion of the case to a chapter 7 proceeding." (Motion, ¶ 2). The proposed order converts the case to chapter 7 and provides that the Movant is "awarded its fees and costs in conjunction with filing and/or prosecution of this Motion."

Nothing in the Consent Order entitles the Movant to seek conversion of the case to chapter 7 without notice and a hearing. Indeed, even if the Chapter 13 Trustee were to seek conversion of this case as contemplated by the order (the time for which had not even expired when the proposed order was submitted), nothing in the order contemplates such action occurring without further notice and a hearing. Accordingly, because the Movant's default motion fails to state a claim for relief, it is denied.

The default motion requests that “the fees and costs associated with the filing and prosecution of this Motion by Movant be borne by Respondent” and the proposed Order provides that Movant is “awarded its fees and costs in conjunction with filing and/or prosecution of this Motion.” The conclusion that the motion itself fails to state a claim for relief is a sufficient basis alone for the denial of a request for fees, but the Court makes two further observations.

First, the Court does not award fees and costs where no legal or factual basis for entitlement has been asserted. Since both the Debtors and the Chapter 13 Trustee are respondents to the motion, it is unclear from whom the Movant seeks to collect its fees and costs. But more to the point, the Movant has asserted no basis for an award of fees and costs under these circumstances. The Consent Order provided for the amendment by the Movant of its proof of claim to include bankruptcy fees and costs of \$800 related to the original motion for relief from stay. Whether the default motion seeks uncollected fees due under the Consent Order or additional fees due to failure to comply with it is completely unclear. Since the Consent Order contemplated terms in the event of a default, one might presume that the \$800 fee is for work to be performed by the Movant’s counsel in the event of such default. But since the Movant has failed to articulate either a legal basis for an award of fees in general or a factual basis for an award of fees in this matter in particular, it is mere speculation on the Court’s part. And even if there was a legal basis for an award of fees, the Movant has not identified in its default motion an exact dollar figure for its fees and costs. A vague, undefined fee request that does not permit the Court to determine (1) whether fees and costs have actually been incurred and (2) whether such fees and costs are reasonable invariably will be denied.

Second, the inclusion of an award of fees and costs in a routine order submitted to chambers on a default motion, where there has been no consent by the other parties and no hearing,

is wholly inappropriate. A bankruptcy court does not grant fees on an *ex parte* basis. The inclusion of a generalized award of fees in a consumer default is improper.

The Court does not appreciate the inclusion of provisions in proposed orders, especially routine ones, that go well beyond the relief that is proper. If counsel's professionalism is not sufficient to avoid such conduct, the Court will consider sanctions in the future. Based on the foregoing, it is

ORDERED that the motion for conversion to a chapter 7 proceeding is denied (Doc. 31).

It is

FURTHER ORDERED that the Movant is not entitled to any fees or costs for the filing or prosecution of this motion for conversion to chapter 7.

End of Order

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